

Citizens' Representative Message

The provincial Ombudsman of Canada are a pretty tight-knit group. Since my appointment on May 1st, I've come to realize just how much productive and collegial communication takes place between them. Early in June, I received an email from the Office of the Nova Scotia Ombudsman with the subject line "Appeal Court Decision." As Ombudsman, we don't end up in court often, but when one of us does, it sparks interest from coast to coast to coast. For a while, we had all known that our colleague, William Smith, had been involved in a case against the Attorney General of Nova Scotia representing their Department of Health. The Department had been contesting Mr. Smith's ability to properly investigate the treatment and protection of an adult who was under the province's care. When asked for a complete, unredacted record of the citizen's care, the Minister refused to produce anything other than a heavily redacted record, and relied on privacy legislation to do so. Mr. Smith believed this was wrong; that it did a disservice to the citizen, and set a dangerous precedent for his future access to evidence. So, he fought the case and won. In doing so, the most important thing is that the individual at issue will get the benefit of a full, unbiased review of his care. But, there was somewhat of

a delicious by-product in the decision for all Ombudsman offices in Canada. We were all buoyed by the court's reaffirmation of the principles first espoused by the Supreme Court of Canada in 1984: that the Ombudsman "occupies a special, unique and important role in Canada's constitutional democracy." Writing for the court, Mr. Justice Jamie Saunders classified the Ombudsman as a "potent tool for citizens with reasons to doubt the claims of 'transparency' and 'accountability' from those whose hands control the levers of power." A critical part of this is having unfettered access to information beyond what may be legally withheld under a standard access to information request. Fortunately, here in Newfoundland and Labrador, we have not experienced this problem in any meaningful way. Our pre-existing confidential environment is respected and we very rarely have difficulty with cooperation or disclosure from our public service. Redacted documents, when they (seldom) arrive, are quickly unredacted after our jurisdiction and our exemptions from ATIPPA are explained. Nevertheless, we congratulate our colleagues in the Nova Scotia office for this significant win for the citizen, and Ombudsman offices across the country.

Bradley J. Moss



Fairness by Design: An Administrative Fairness Self-Assessment Guide

Have you ever wondered whether your public organization is delivering its programs and services in a fair and reasonable manner? There may be times when you have accessed a public service and questioned whether the service, process or decision provided you with optimal level of fairness.

The Office of the Ombudsman in Saskatchewan, Manitoba, Nova Scotia and Yukon and Ombudsperson in British Columbia have developed a resource intended for public bodies to assess and ensure administrative fairness is built into policies and processes when dealing with the public. Its focus is on three aspects of fairness, fair process, fair decision and fair service. It provides checklists to accompany seven fairness standards which can be used by public bodies to ensure their practices, policies and programs meet the fairness obligations set out in provincial Ombuds legislation, principles of administrative law



and broader societal fairness standards. It provides the following benefits of self-assessment:

- It demonstrates a commitment to fairness, which can increase the public's confidence in government;
- It instills a sense of confidence in public sector employees that they are treating the people they provide services to fairly;
- It may reduce the number of complaints received by the public body; and
- It may enable public bodies to resolve issues more quickly and efficiently, saving time and money.

This Guide is publicly available at:

https://www.bcombudsperson.ca/sites/default/files/Fairness-by-Design_web_0.pdf

If you have any questions about the Guide, its content or how the content is applied in your organization, please connect with us!

Seeking Fairness

A citizen contacted our Office alleging a violation of the **Public Tendering Act** in relation to a tender for a Standing Offer Agreement on behalf of the Department of Transportation and Works. It was alleged that a contract was awarded to a supplier who did not meet the specifications of the respective tender. The Public Procurement Agency (the Agency) initiated a review of the contract. Subsequently, the Agency advised it had exercised its option to cancel the contract with a thirty-day notice to the contract holder. The OCR was satisfied that the Agency had appropriately reviewed the matter and addressed the identified discrepancy with the specifications required by the Department of Transportation and Works. A new contract would eventually be let.



We are taking this space in *OCR Insights* this month to send out our thanks and tremendous appreciation to Juanita Dwyer, RSW, who left the OCR to take a new position with The Gathering Place. Juanita came to us shortly after graduating from the Academy Canada paralegal program in 2004. She was promoted from Investigator to Senior Investigator and completed her entire Bachelor of Social Work studies while here at the OCR. She will always be known for her empathetic approach to the thousands of citizens she met in her fifteen years here, and her amazing recall for dates and chronological details! Her desire to practice social work on the front line is the next step in her remarkable personal journey, and we wish her all the best!

Finding Solutions

A citizen contacted us alleging Eastern Health (EH) failed to adequately investigate an incident of medical error involving a family member at a personal care home. Personal care homes are privately owned and operated and are not within the jurisdiction of the OCR. They are, however, licensed and regulated by EH in accordance



with the Provincial Personal Care Home Operational Standards. Upon investigation, we found EH had adhered to policy regarding inspections. We determined, however, that more forceful policy may be needed with respect to the monitoring of resident medication. Also, public posting online of quarterly and annual inspection reports for personal care homes would be prudent and in the public interest. EH agreed and accepted our recommendations in relation to these issues, however, noted that posting quarterly/annual inspections online would fall under provincial jurisdiction. In response, this recommendation was forwarded to the Department of Health and Community Services for consideration.

Questions? Comments?

Is your department, agency or community group interested in learning more about the OCR, its services and processes? Do you have a suggestion or question to be addressed in a future edition of *Insights*? Call us at 1-800-559-0079 or (709) 729-7647, or e-mail citrep@gov.nl.ca.

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